STATE OF MICHIGAN

COURT OF APPEALS

BETH A. JANUSZ, Plaintiff-Appellee,	UNPUBLISHED March 16, 2006
v	No. 258018 Oakland Circuit Court
STERLING MILLWORK, INC., Defendant-Appellant.	LC No. 2001-032442-NZ

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment, entered after a jury trial, awarding plaintiff $45,000 in damages, plus interest and taxable costs, in this case involving hostile environment sexual harassment and retaliation under the Michigan Civil Rights Act, MCL 37.2101 *et seq*. Defendant argues that the trial court erred in denying its motions for summary disposition, directed verdict, and judgment notwithstanding the verdict ("JNOV"). We affirm.

A trial court's decision on a motion for summary disposition is reviewed de novo on the entire record to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. The trial court's decision on motions for directed verdict or JNOV are also reviewed de novo in the light most favorable to the nonmoving party to determine whether there exists a genuine question of fact. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). Where "reasonable jurors could honestly have reached different conclusions," we may not "substitute [our] judgment for that of the jury." *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986). Because of the similar standards of review, and because the deposition testimony presented for defendant's summary disposition motion was substantially identical to the evidence presented at trial, we address the issues raised by the motions together.

Defendant first argues that plaintiff failed to prove her hostile environment sexual harassment claim. We find ample evidence from which the jury could find otherwise.

The Civil Rights Act (CRA) prohibits discrimination on the basis of sex, MCL 37.2102(1), which includes hostile environment sexual harassment, MCL 37.2103(i)(iii). To establish a prima facie case of hostile work environment sexual harassment, a plaintiff must prove, by a preponderance of the evidence, that:

> (1) the employee belonged to a protected group;
>
> (2) the employee was subjected to communication or conduct on the basis of sex;
>
> (3) the employee was subjected to unwelcome sexual conduct or communication;
>
> (4) the unwelcome conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile or offensive work environment; and
>
> (5) respondeat superior. [*Chambers v Trettco, Inc*, 463 Mich 297, 311; 614 NW2d 910 (2000), quoting *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).]

Plaintiff presented ample evidence at trial showing that she was subjected to unwelcome sexual communication and conduct at work, which included comments about her appearance (e.g., that she had "nice headlights," whether she had "fries with that shake"), comments about her alleged sexual involvement with a coworker, and other sexual conduct (e.g., masturbation gestures, a coworker reaching into her coat, displays of pornography on work computers).[1] Reasonable jurors could find these comments unwelcome, sexual in nature, and motivated by plaintiff's gender. Viewed in a light most favorable to plaintiff, the evidence was sufficient to create a question of fact for the jury whether plaintiff was subjected to sexual harassment that substantially interfered with her employment and created a hostile and offensive work environment.

In a hostile environment case involving harassment committed by a coworker or a supervisor, an employer may avoid being held vicariously liable "if it adequately investigated and took prompt remedial action upon notice of the alleged hostile work environment." *Chambers*, *supra* at 311-312, quoting *Radtke*, *supra* at 396-397. "[N]otice of sexual harassment is adequate if, by an objective standard, the totality of the circumstances were such that a reasonable employer would have been aware of a substantial probability that sexual harassment was occurring." *Chambers*, *supra* at 319. Similarly, "the relevant inquiry concerning the

---

[1] There is evidence that plaintiff also received hostile comments on the basis of her sex from Patrick Flynn, plaintiff's immediate supervisor. Because these comments were not sexual in nature, they do not constitute sexual harassment under the CRA. *Haynie v Dep't of State Police*, 468 Mich 302, 312; 664 NW2d 129 (2003). However, they support the conclusion that plaintiff would not have received the same treatment had she been male.

adequacy of the employer's remedial action is whether the action reasonably served to prevent future harassment of the plaintiff." *Id.*

Here, there was evidence that plaintiff complained to Mark Bolitho, defendant's owner and president, and that Bolitho was aware of some of the comments about plaintiff's appearance and of rumors that plaintiff was involved in a sexual affair with a coworker, Greg Blasses. Plaintiff complained to Blasses about the vulgar comments and gestures of other employees, and Blasses confronted some of the employees. Blasses claimed that he attempted to inform Bolitho, but Bolitho did not want to know about it. There was evidence that Bolthio initially told plaintiff to ignore the comments, but he initiated an investigation when plaintiff persisted. The investigator, Nancy Hill, provided a written report of her findings that there was at least some hostile work environment sexual harassment directed at plaintiff. One employee was given a written reprimand, but other perpetrators of the harassment were not disciplined. Instead, Blasses was terminated for not promptly reporting what he knew. Viewed most favorably to plaintiff, there was sufficient evidence that a reasonable employer would have been aware of a substantial probability that plaintiff was being sexually harassed, and there was sufficient evidence for the jury to find that defendant failed to take prompt remedial action that was reasonably served to prevent further harassment.

Defendant next argues that plaintiff failed to prove her claim of unlawful retaliation. We disagree.

The CRA prohibits retaliation for opposing or complaining about a violation of the act. MCL 37.2701(a). "To establish a prima facie case of retaliation . . . a plaintiff must show (1) that the plaintiff engaged in protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." *Meyer v City of Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). To be actionable, "an adverse employment action (1) must be materially adverse in that it is more than 'mere inconvenience or an alteration of job responsibilities,' and (2) must have an objective basis for demonstrating that the change is adverse, rather than the mere subjective impressions of the plaintiff." *Id.* at 569, quoting *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 364; 597 NW2d 250 (1999). Adverse employment actions include "a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003) (citation omitted).

In this case, plaintiff presented evidence that, following her complaints of sexual harassment, defendant made her start punching a time card, took away her cellular telephone, and then took away her company car and office keys. Defendant asserts that these actions were taken for legitimate business reasons. However, the timing and circumstances of the actions, when viewed in a light most favorable to plaintiff, were sufficient to create a question for the jury whether defendant retaliated against plaintiff because she complained of sexual harassment.

Defendant finally argues that the trial court should have granted its motion for JNOV because the jury's award of present economic damages was inconsistent with its finding that plaintiff was not constructively discharged. We disagree.

"If there is an interpretation of the evidence that provides a logical explanation for the findings of the jury, the verdict is not inconsistent." *Lagalo v Allied Corp*, 457 Mich 278, 282, 286; 577 NW2d 462 (1998), quoting *Granger v Fruehauf Corp*, 429 Mich 1, 7; 412 NW2d 199 (1987). A jury's verdicts may only be set aside where they "are so logically and legally inconsistent that they cannot be reconciled." *Id*.; See also *Clark v Seagrave Fire Apparatus, Inc*, 170 Mich App 147, 153; 427 NW2d 913 (1988). Here, plaintiff presented evidence that after she complained of the harassment, defendant refused to pay her for any of the time she was off work due to the harassment, that she incurred medical bills and prescription expenses, and that she lost various benefits, including the use of a company cellular telephone and company car. The jury logically could have decided to compensate plaintiff for these losses, the amounts of which defendant does not contest on appeal. Because there is a logical explanation for the jury's verdict, the trial court did not err in denying defendant's motion for JNOV on this ground.

In light of our decision, it unnecessary to address whether plaintiff also sufficiently established a prima facie case of discrimination under the United States Civil Rights Act of 1964 ("Title VII"), 42 USC 2000e-2.

Affirmed.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot